

Topic 9 - Elections

The committee elections, much like the Federal and State elections, must be conducted in a way to ensure that all persons entitled to vote have the opportunity to do so and the security of their vote is maintained. Naturally, to guarantee a fair election, the process needs to cover many situations and a number of steps including the election and individual ballots.

General provisions

The committee must be chosen at each annual general meeting of the body corporate (SM s13). However committee members may also be appointed at an extraordinary general meeting or casual vacancies may be filled at a committee meeting (see Topic 11: Filling Vacancies) (SM s13). However there are exceptions to this. Please see "Special conditions" for more information.

The elections must be held in accordance with sections 16 to 27 of the Standard Module however the body corporate may, by special resolution, decide that the elections may be held in another way. However, the method chosen must be fair and reasonable. Additionally, the ballot must be a secret ballot unless the body corporate has passed an ordinary resolution to hold open ballots (SM s15).

Section 91 of the Standard Module provides that a returning officer must be appointed if a motion is to be decided by secret ballot. While no similar provisions mandate the appointment of a returning officer for elections to be held by secret ballot, the body corporate could, by ordinary resolution, choose to appoint a returning officer.

The election of the committee members must be the last item of business on the agenda of the annual general meeting. The election of members takes effect immediately after the close of the meeting (SM s24).

The ballots must be held in the following order and each ballot may proceed to the count only after the person chairing the meeting allows enough time for votes to be cast and closes the ballot:

- Chairperson;
- Secretary;
- Treasurer; and
- ordinary members.

Candidates and their scrutineers may watch the count.

The following information is based on the provisions of sections 16 to 27 of the Standard Module.

Special conditions

- Elections do not need to be held if the following apply:
 - There are only 2 lots in the scheme and both are owned by 1 person;
 - or
 - There are more than 3 lots in the scheme and all are owned by 1 person.

In the above examples the committee consists of the 1 person (or their representative) who holds all the positions on the committee.

- Elections do not need to be held if the following apply:
 - There are only 2 lots in the scheme and the 2 lots are in different ownership; or
 - There are more than 3 lots in the scheme and there are only 2 different owners for all the lots.

In the above examples the committee consists of 2 individuals who are owners, or the nominees of lot owners, and they must decide between themselves who will hold the positions of the executive members of the committee. If they cannot agree, the positions of the executive members are jointly held by both of them.

Conduct of elections at the annual general meeting

After nominations close, the secretary must prepare ballot-papers for any positions for which a ballot is required e.g. A ballot will not be required if there is only 1 nomination received for the position of chairperson, secretary or treasurer as the person will be declared elected unopposed (SM s26).

Separate ballots must be held for the chairperson, secretary, treasurer and ordinary members. However, it is not necessary to have separate ballot-papers for each position.

Provided the nominations comply with the regulations (see Topic 7: Eligibility and Topic 8: Nominations), the secretary must prepare the ballot-papers listing the candidates for each position in alphabetical order. The ballot-paper must also state whether the candidate is a lot owner. If the candidate is not a lot owner, the name of the lot owner who nominated the candidate must be stated together with the candidate's residential or business address.

Finally, if the candidate is seeking any payment from the body corporate for carrying out the duties of a committee member, the details of that payment must be shown on the ballot-paper (SM s21).

We will now look at conducting the elections either by secret ballot or by open ballot.

Secret ballot (SM. s21)

To ensure the secrecy of the ballot is maintained, the secretary must include (with the notice of the annual general meeting) the following ballot material:

- the ballot-papers;
- an envelope simply marked "ballot-paper"; and either:
 - a separate particulars envelope; or
 - a particulars tab that forms part of the ballot-paper envelope.

The particulars envelope or the particulars tab must have space for certain information to be provided by the person voting. This information is necessary to confirm the persons entitlement to vote (e.g. if the person owes a body corporate debt they are not entitled to vote when choosing members of the committee). The particulars envelope or the particulars tab must list:

- The lot number (for which the vote is exercised);
- The name of the lot owner; or
- The name of the person having the right to vote; and
- The basis on which the person has a right to vote (e.g. a person acting under a power of attorney for a lot owner).

How to vote

1. Beginning with the chairperson, secretary and treasurer, the voter must place a mark next to the candidate they wish to vote for.
2. For ordinary members, the voter places a mark next to as many candidates they wish to vote for.
3. The completed ballot-paper must then be placed in the ballot-paper envelope which is then sealed.
4. If a particulars envelope has been issued, place the ballot-paper envelope inside the particulars envelope and complete the details as listed above, sign and date the envelope.
5. If a ballot-paper envelope including a particulars tab has been issued, complete the details on the particulars tab as listed above and sign and date the particulars tab.
6. Give the completed particulars envelope with the ballot-paper envelope enclosed, or the ballot-paper envelope with the completed particulars tab attached, to the secretary (or the returning officer, if the body corporate has appointed a returning officer). Alternatively the envelope can be forwarded to the secretary (or returning officer) so that the secretary (or returning officer) receives it before or at the annual general meeting.

All completed ballot-papers must remain in the custody of the secretary until the annual general meeting.

Scrutiny of votes

At the meeting, the secretary must pass all particulars envelopes or ballot paper envelopes to the person chairing the meeting. The person chairing the meeting must:

- confirm that the persons casting the votes are eligible to vote in the election (by checking the details on each of the particulars envelopes or the particulars tabs);
- take the ballot paper envelopes out of the particulars envelopes or detach the particulars tabs from the ballot paper envelopes;
- place all the ballot paper envelopes in a container in open view of the meeting and thoroughly mix the envelopes;
- take each ballot paper out of its envelope.

The chair must record the count of votes for each ballot in the minutes of the meeting.

The person chairing the meeting can delegate a function defined in the section to a person attending the meeting who is not a candidate for the position and who, in the chairperson's opinion, has sufficient independence.

Open ballot (SM. s22)

The secretary must include with the notice of the annual general meeting the following ballot material:

- the ballot-papers;
- an envelope marked "ballot-paper" self addressed to the secretary.

How to vote

1. Beginning with the chairperson, secretary and treasurer, the voter must place a mark next to the candidate they wish to vote for.
2. For ordinary members, the voter places a mark next to as many candidates they wish to vote for.
3. Sign the ballot paper.
4. Write the lot number on the ballot paper.
5. Place the completed ballot-paper in the ballot-paper envelope and again write the lot number on the back of the envelope.
6. Either give the ballot-paper envelope to the secretary or forward it to the secretary so that secretary receives it before or at the meeting.

Scrutiny of votes

At the meeting the secretary must pass any ballot-papers or ballot paper envelopes to the person chairing the meeting. The person chairing the meeting must:

- confirm the persons casting the votes are eligible to vote in the election (by checking the details on each of the particulars envelopes or the particulars tabs);
- if the ballot paper is in a ballot-paper envelope, take the ballot paper out of the envelope.

The chair must record the count of votes for each ballot in the minutes of the meeting.

Conduct of ballot at the annual general meeting

Executive positions (SM s26)

If there is only 1 nomination received for any of the positions of chairperson, secretary or treasurer, a ballot will not need to be held. The person chairing the meeting will simply declare the person elected unopposed (SM s26).

However, if for any of the executive positions there have been no nominations, the subsequent steps should be followed:

- The person chairing the meeting must invite nominations for the position/s and must accept nominations either:
 - from the body corporate members present at the meeting; or
 - in writing from members of the body corporate not present.

Note: the person/s nominated must be eligible.

A member of the body corporate cannot nominate more than 1 person for a position even if the member is the owner of more than one lot. However, a lot owner may nominate for more than one position.

If more than 1 person has been nominated for a position, a ballot will be necessary and the person who receives the highest number of votes is declared elected.

Once the voting has been completed, if 2 or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides.

Ordinary positions (SM s27)

The ballot for ordinary positions can only be counted after the executive positions are filled.

If a person who has nominated for both an executive and ordinary position is elected as an executive member their nomination as an ordinary member has no effect and they cannot be elected as an ordinary member.

If the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **not more than** the required number of members for the committee, the person chairing the meeting must declare the candidates elected as ordinary members.

Also, if the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **less than** the required number of members for the committee, the person chairing the meeting must invite nominations at the meeting for ordinary positions to bring the total number of all committee members to not more than the required number.

This means nominations must be invited:

- in a scheme of 7 or more lots - where the number of nominations is fewer than 7; or
- in a scheme of fewer than 7 lots - where the number of nominations received is fewer than the number of lots in the scheme. (EN P87)

Usually the co-owners of a lot are restricted from having more than 1 co-owner on the committee (see Topic 7: Note) however, an exception exists. In the above scenario where the number of candidates is **less than** the required number, if 1 co-owner of a lot has been elected to the committee, not more than 1 other co-owner of the lot may be nominated as an ordinary member of the committee, but only to bring the number of voting members of the committee to 3.

The person chairing the meeting must invite nominations for the position/s and must accept nominations either:

- from the body corporate members present at the meeting; or
- in writing from members of the body corporate not present.

Note: the person/s nominated must be eligible.

A member of the body corporate cannot nominate more than 1 person for a position even if the member is the owner of more than one lot.

Even though a member may have nominated for a particular position, they are entitled to nominate for another position.

If the number of candidates nominated for ordinary member positions plus the number of elected executive positions is **more than** the required number of members for the committee, the person chairing the meeting must proceed with the ballot for ordinary members.

Depending on how many candidates there are and the number of ordinary positions to be filled, the persons who receive the most number of votes, in descending order, must be declared elected as ordinary members.

Once the voting has been completed, if 2 or more nominees receive the same number of votes, the deadlock may be decided by chance in a way the meeting decides.

Note: If a person has already been elected to an executive member position, any mark against their name on a ballot paper for ordinary member positions is void.

Declaring the vote (SM s28)

The following procedures must be complied with:

The Chairperson

The person chairing the meeting must declare the result of the election and must state the number of votes cast for each candidate.

The Minutes

The number of votes cast for each candidate must be recorded in the minutes of the general meeting.

The Tally Sheet

A voting tally sheet must be kept for the general meeting.

For each open ballot, the voting tally sheet must include:

- a list (by lot number) of the votes rejected;
- the reason for each rejection;
- the total number of votes counted for each candidate.

For each secret ballot, the voting tally sheet must include:

- a list (by lot number) of the votes rejected before the ballot paper envelopes were opened;
- a list of the votes taken out of the ballot paper envelopes, but rejected as informal;
- the reason for each rejection;
- the total number of votes counted for each candidate.

The voting tally sheet may be inspected at the meeting by any of the following:

- a voter at the meeting
- a candidate
- the returning officer (if appointed)
- the person chairing the meeting
- the scrutineer appointed by a candidate.

Failure to elect a committee at the annual general meeting (SM. s29 and 30)

An extraordinary general meeting must be called if the following applies:

At the annual general meeting:

- at least 1 person is elected as an executive or ordinary member of the committee; and
- at least 1 executive position is not filled; or

- the total number of voting members is less than 3; and
- a body corporate manager has not been engaged under a Chapter 3 Part 5 engagement.

The extraordinary general meeting must be **called within 1 month** after the annual general meeting.

The extraordinary general meeting must be called by the elected member of the committee, or if there is more than 1 elected member, the elected members acting jointly.

The extraordinary general meeting must be **held within 2 months** after the annual general meeting.

Appointing committee members at the extraordinary general meeting (SM. s31)

The body corporate may appoint a person who is eligible to be a member of the committee to fill any vacancy. It is not necessary to conduct an election as normally the case for the annual general meeting. For example, invitations to nominate do not need to be sent to lot owners.

If 1 co-owner of a lot has been elected to the committee, not more than 1 other co-owner of the lot may be nominated as an ordinary member of the committee, but only to bring the number of voting members of the committee to 3.

The body corporate cannot appoint a person if the persons appointment would result in the committee being composed of more than the required number.

Engagement of a body corporate manager under Division 10 (SM. s32)

The agenda of the extraordinary general meeting must also include a motion to approve the engagement of a body corporate manager under Chapter 3 Part 5.

The motion will only be considered if:

- at least 1 executive member position is not filled; or
- the total number of voting members is less than 3.

If the motion is considered, it must be the last item of business on the agenda.